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## SECTION 1 DEFINITION OF TERMS

**1.1 TERMS.** For the purpose of this Ordinance, the following terms, phrases, words and abbreviations shall have the meanings ascribed to them below. Definitions of words defined in the Communications Act shall have the meaning ascribed to them therein unless otherwise set forth in this Ordinance. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number:

- A. "Affiliate" means a Person or entity (i) with a direct or indirect ownership interest in the subject entity of five (5%) percent or more or which controls such interest, including forms of ownership such as general, limited, or other partnership interests, direct ownership interests, limited liability companies and other forms of business organizations and entities but, not including corporations, (ii) with a stock interest in the subject entity where the subject entity is a corporation and such stockholder or its nominee is an officer or director of the Grantee or who directly or indirectly owns or controls five (5%) percent or more of the outstanding stock, whether voting or non-voting; or (iii) which controls Grantee and/or, is controlled by, or is under common control with such Person or entity.
- B. "Attachment" means any wire, optical fiber or other cable, and any related device, apparatus or auxiliary equipment, for the purpose of voice, video, or data transmission.
- C. "Communications Act" means the Communications Act of 1934, as now or hereafter amended.
- D. "Conduit Facility" means any structure, or section thereof, containing one or more ducts, conduits, manholes, handholes or other such facilities in the Grantee's Telecommunications System.
- E. "Duct" means a single enclosed raceway for conductors, optical fiber, wire or other cable.
- F. "Facility" means any tangible component of the Telecommunications System.
- G. "FCC" means Federal Communications Commission, or successor governmental entity thereto.
- H. "Franchise" means the non-exclusive right and privilege granted to Grantee under this Rights of Way Ordinance.

- I. "Franchise Authority" or "Franchising Authority" means the Borough of Blawnox, Allegheny County, Commonwealth of Pennsylvania, or the lawful successor, transferee, or assignee thereof.
- J. "Grantee" means a person in continuous compliance with this Rights of Way Ordinance.
- K. "Licensee" means any Person, franchised, licensed, permitted or otherwise lawfully occupying space in the Public Way.
- L. "Person" means any individual, sole proprietorship, partnership, association, limited liability company, corporation or other form of organization authorized to do business in the Commonwealth of Pennsylvania, and includes any natural person.
- M. "Public Way" means the surface of, and the space above and below, any public street, highway, turnpike, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of-way, including public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Franchise Authority in the Service Area which shall entitle the Franchise Authority and the Grantee to the use thereof for the purpose of constructing, leasing, operating and maintaining the Telecommunications System. Public Way shall also mean any easement now or hereafter held by the Franchise Authority within the Service Area for the purpose of public travel and/or for utility and/or public service use dedicated for compatible uses, and shall include other easements and/or rights-of-way as shall within their proper use and meaning entitle the Franchise Authority and the Grantee to use thereof for the purposes of constructing, leasing, operating, or maintaining Grantee's Telecommunications System over poles, wires, cables, conductors, ducts, conduits, pedestals, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Telecommunications System.
- N. "Service Area" means the present municipal boundaries of the Franchising Authority, and shall include any additions thereto by annexation or other legal means.
- O. "Surplus ducts or conduits" are Conduit Facilities other than those occupied by the Grantee or any prior Licensee and unoccupied duct(s) held by Grantee as for emergency or spare use.
- P. "Telecommunications Services" means:
  - (a) The transmission of communications or information in electrical, electronic, or optical form or by any means whether now known or hereafter to become known, including, but not limited to, voice, video, or data, whether or not the content of the transmission or the medium of the transmission is

owned by the Grantee itself, unless the Licensee is able to demonstrate to the Franchise Authority by a preponderance of the evidence that such transmission is excluded from the definition of Telecommunications Service under Section 1.1(P)(b)..

(b) Telecommunications Services do not include the following:

- (1) Over-the-air broadcasts; or
- (2) A specific ~~telecommunications~~ Service regulated by the Commonwealth of Pennsylvania Public Utility Commission as a public utility for which a certificate of public convenience has been obtained and a tariff therefor has been filed.

Q. "Telecommunications System" means all wires, cables, ducts, conduits, vaults and other necessary Facilities owned and/or used by the Grantee for the purpose of providing Telecommunications Services and located in, under and above a Public Way.

R. "Year", "Annual", or "Annually" means the period consisting of a full calendar year, beginning January 1 and ending December 31, unless otherwise provided in this Franchise.

## SECTION 2 GRANT OF FRANCHISE

2.1 **GRANT.** Subject to state or federal law, it shall be unlawful for any Person to construct, lease, maintain or operate a Telecommunications System within the Public Ways unless in compliance with this Rights of Way Ordinance. Continuous compliance with this Rights of Way Ordinance grants to Grantee a non-exclusive right and privilege which authorizes the Grantee to construct, lease, maintain and operate a Telecommunications System in, along, among, upon, across, above, over, under, or in any manner connected with Public Ways within the Service Area and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, and/or retain in, on, over, under, upon, across, and/or along any Public Way and all extensions thereof and additions thereto, such wires, cables, fiber optic cable, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and/or other related property or equipment as may be necessary or appurtenant to the Telecommunications System.

2.2 **NON-EXCLUSIVE GRANT.** The right to use and occupy said Public Ways, as defined above, for the purpose herein set forth shall not be exclusive in Grantee. This Rights of Way Ordinance shall not apply to use of the Public Ways by a governmental entity or quasi governmental entity.

**2.3 NOT A CABLE SYSTEM.** This Franchise does not authorize the Grantee to operate a cable television system, nor shall it *apply* to "cable service," as defined by Section 602 of the Communications Act (47 U.S.C.A. §522).

**2.4 NOT A POLE ATTACHMENT AGREEMENT.** This Franchise does not authorize the Grantee to attach equipment or facilities to any pole or other structure for the intentional transmission or radiation of radio frequency emissions or energy through the ether by any means now known or hereafter developed. Further, this Franchise does not authorize Grantee to attach or to occupy any property owned by the Borough, but for the Public Ways.

### SECTION 3 STANDARDS OF SERVICE

**3.1 CONDITIONS OF STREET OCCUPANCY.** All transmission and distribution structures, poles, other lines, and equipment installed or erected by the Grantee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of Public Ways and with the rights and reasonable convenience of property owners who own property that adjoins any of said Public Ways.

**3.2 S IC W.** If during the course of Grantee's construction, operation, and/or maintenance of the Telecommunications System there occurs a disturbance of any Public Way by Grantee, Grantee shall, at its expense, replace and restore such Public Way to a condition which existed immediately prior to such disturbance and in a manner approved by the Franchising Authority. If Grantee excavates the surface of any Public Way, Grantee shall be responsible for restoration of the Public Way and its surface within the area affected by the excavation. The Borough may, after providing notice to Grantee, refill and/or repave any opening made by Grantee in the Public Way, and the expense thereof shall be paid by Grantee. The Borough reserves the right, after providing notice to Grantee, to remove and/or repair any work done by Grantee which, in the sole determination of the Borough Engineer, is inadequate. The cost thereof, including the cost of inspection and supervision, shall be paid by the Grantee. All excavations made by Grantee in the Public Way shall be properly safeguarded for the prevention of accidents. All of Grantee's work shall be done in strict compliance with all applicable rules, regulations and ordinances of the Borough.

**3.3 RELOCATION AT REQUEST OF FRANCHISING AUTHORITY.** Upon its receipt of reasonable advance notice except under exigent circumstances, the Grantee shall, at its own expense, locate, protect, support, temporarily disconnect, relocate in the Public Way, and/or remove from the Public Way or other property owned by the Franchising Authority, any property of the Grantee when lawfully required by Franchising Authority by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, electrical conduits or any other type of structures or improvements by the Franchising Authority; provided, however, the Grantee in all such cases shall share proportionately with utility companies in any federal, state, or county funds awarded to Franchising Authority specifically for any of the purposes enumerated above. Nothing in this section shall be construed to require Franchising Authority to make application for

or seek a grant for any funds. Upon the failure of the Grantee to commence, pursue, or complete any work required by law, (or by the provisions of Grantee's franchise, or any other applicable federal, state or local law, ordinance, rule or regulation) to be done in any Public Way or other public place within the time prescribed, and to the satisfaction of the Franchising Authority, the Franchising Authority, at its option, may cause such work to be done, and the Grantee shall pay to Franchising Authority the cost thereof in the itemized amounts reported by the Franchising Authority to the Grantee within thirty (30) days after receipt of such itemized report. But, the Grantee, upon prior approval of the Franchising Authority, may elect to abandon any or all of the Telecommunications System rather than relocate it.

**3.4 RELOCATION AT REQUEST OF THIRD PARTY.** The Grantee shall, on the request of any Person holding a requisite lawful permit issued by the Franchising Authority, temporarily raise or lower its wires to permit the moving of any equipment, building, material or otherwise, provided: (a) the expense of such temporary raising or lowering of wires is paid by said person, including, if required by the Grantee, making such payment in advance; and (b) the Grantee is given not less than ten (10) days advance written notice to arrange for such temporary wire changes. The Grantee may request the Franchising Authority to temporarily raise or lower its wires or to make other changes in its plant and equipment to accommodate Grantee's construction, which request shall be promptly considered by the Franchising Authority.

**3.5 TREES AND SHRUBBERY.** The Grantee shall notify Franchising Authority and all affected property owners regarding Grantee's need to trim trees or other natural growth upon and overhanging Public Ways so as to prevent the branches of such trees from coming in contact with the Telecommunications System of the Grantee; at the option of the Franchising Authority, such trimming may be done by the Franchising Authority at the reasonable expense of the Grantee, or by the Grantee under the Franchising Authority's supervision and direction at the expense of the Grantee. Trimming shall be limited to the area required for clear Telecommunications System passage and shall not include major structural branches which materially alter the appearance and natural growth habits of the tree. Grantee shall give Franchising Authority and all affected property owners five (5) business days prior written notice of Grantee's intent to trim trees or other natural growth pursuant to this section.

**3.6 USE OF GRANTEE'S EQUIPMENT BY FRANCHISING AUTHORITY.** Except as already set forth in this Ordinance and subject to any applicable state or federal regulations or tariffs, the Franchising Authority shall have the right to make additional use, for any public purpose, of any poles or conduits controlled or maintained exclusively by or for the Grantee in any Public Way; provided that (a) such use by the Franchising Authority does not interfere with use by the Grantee; (b) the Franchising Authority holds the Grantee harmless from and against any and all claims, demands, costs, and/or liabilities of every kind and nature whatsoever arising out of such use of said poles or conduits, including, but not limited to, reasonable attorneys' fees and costs provided, however, that the Franchising Authority shall not hold harmless from claims and damages arising out of the willful or negligent acts caused by Grantee, and, (c) at Grantee's sole discretion, the Franchising Authority may be required either to pay a reasonable rental fee or otherwise reasonably compensate Grantee for the use of such poles, conduits or equipment.

**3.1 SAFETY REQUIREMENTS.** Construction, installation, and maintenance of the Telecommunications System shall be performed in an orderly and workmanlike manner. All cable, wires, conductors and other components, elements and parts of the Telecommunications System shall be installed, where possible, parallel with and in the same manner as electric and telephone lines. All such work shall be performed in accordance with applicable safety code or technical requirements, including, but not limited to, National Electrical Safety Code (National Bureau of Standards); National Electrical Code (National Bureau of Fire Underwriters); Bell System Code of Pole Line Construction; and applicable FCC and/or other federal and state regulations. Multiple cable wires, lines, fiber optic cable, waveguides and/or other similar facility configurations shall be arranged in parallel and bundled with due respect for engineering considerations. The Telecommunications System shall not endanger and/or interfere with the safety of persons or property in the Service Area. In particular, Grantee shall comply with all federal laws and/or regulations which govern plant signal leakage and/or interference with communications media. Any antenna structure used in the Telecommunications System shall comply with all construction, marking, and lighting of antenna structure requirements of the United States Department of Transportation (Federal Aviation Administration), the Borough's zoning requirements and the FCC. If, at any time, it is determined by the Franchising Authority and/or any other agency or authority of competent jurisdiction that any part of the Telecommunications System, including, without limitation, any means used to distribute Telecommunications Service, is harmful to the health and safety of any person, then the Grantee shall, at its own cost and expense, promptly correct all such conditions.

**3.8 MAPS.** Prior to beginning any construction, Grantee shall provide the Borough with a construction schedule for work in the Public Ways which schedule shall be updated as changed. Upon completion of initial construction and upon completion of construction of any modification to the Telecommunications System made after completion of initial construction, Grantee shall provide the Borough with the total amount of Public Ways, measured linearly, occupied by Grantee's Telecommunications System, with a map showing the location of its installed Telecommunications System in the Public Ways, as built. Such 'as-built' maps shall be provided in both paper form, as well as in an electronic format for placement on the Borough's GIS system, each in a form acceptable to the Borough Engineer. Annually thereafter, Grantee shall provide a map to the Borough showing the location of Grantee's Facilities in the Public Ways on a scale of one hundred fifty feet (150') per inch or whatever standard scale the Borough adopts for general use.

**3.9 AERIAL AND UNDERGROUND CONSTRUCTION.** In those areas of the Service Area where all of the transmission or distribution facilities in the form of cables, wires, lines, fiber optic cable, waveguides and/or other similar facilities of the respective public utilities providing telephone communications and electric services are underground, the Grantee likewise shall construct, operate, and maintain all of its transmission and distribution facilities underground. In those areas of the Service Area where the transmission and/or distribution facilities of the respective public utilities providing telephone communications, and electric services are both aerial and underground, Grantee shall have the sole discretion to construct, operate, and maintain all of its transmission and distribution facilities, or any part thereof, aerially or underground. If at any time Franchising Authority determines that existing wires, cables or

other like facilities of public utilities anywhere in the Service Area shall be changed from an overhead to an underground installation, the Grantee shall also, at its expense to the Franchising Authority, convert its Telecommunications System to an underground installation. Nothing in this section shall be construed to require Franchising Authority to request any such utility relocation. Grantee's design and engineering specifications shall take into account the existing landscaping of the property.

**3.10 EXCAVATIONS.** Grantee may make excavations in Public Ways for any Facility needed for the maintenance or extension of the Grantee's Telecommunications System subject to obtaining excavation permits from the Borough. Prior to doing such work, Grantee must apply for, and obtain, appropriate permits from the Borough, and give appropriate notices to any other franchisees, licensees and/or permittees of the Borough, and/or other units of government owning or maintaining facilities which may be affected by the proposed excavation.

**3.11 INSTALLATION OF SERVICE.** All installation of Telecommunications System shall be performed in a workmanlike manner, using materials of good and durable quality with due regard to the preservation and protection of existing structures. All work to be performed in, on, or about the dwelling or structure of a customer or potential customer shall be performed under the reasonable direction or with the consent of such customer or potential customer.

**3.12 MAINTENANCE OF FACILITIES.** Grantee shall provide and put in use all Telecommunications System Facilities necessary to control and carry Grantee's Telecommunications Services so as to prevent injury to the Borough's property or property belonging to any Person within the Borough. Grantee, solely at its own expense, shall repair, renew, change and improve said Facilities from time to time as may be necessary to accomplish this purpose. Grantee shall not construct its Telecommunications System in a manner that requires any customer, except the Borough, to install cables, ducts, conduits, or other facilities, in, under or over the Borough's Public Ways.

**3.13 EMERGENCY.** Grantee shall comply with emergency or disaster notification requirements of the Federal Communications Commission and all state and all local emergency and/or disaster agencies.

**3.14 TECHNICAL PERFORMANCE AND STANDARDS.** All performance and technical standards governing construction, reconstruction, installation, operation, testing, maintenance and dismantling of the Telecommunications System provided herein shall be in accordance with all FCC and other applicable federal, state and local laws, ordinances and regulations.

**3.15 RESERVATION OF BOROUGH PUBLIC WAYS.** Nothing in this Franchise shall be construed to prevent the Borough from constructing sewers, grading, paving, repairing and/or altering any street and/or laying down, repairing and/or removing water mains and/or constructing and/or establishing any other public work or improvement. If any of the Grantee's Telecommunications System interferes with the construction or repair of any street or public improvement, including construction, repair or removal of a sewer or water main, the



Grantee's Telecommunications System shall be removed or replaced in the manner the Borough shall direct; provided, however, the Borough will cooperate with the Grantee to identify alternate locations within the Public Ways. Any and all such removal or replacement shall be at the expense of the Grantee. Should Grantee fail to remove, adjust or relocate its Facilities by the date established by the Borough Engineer's written notice to Grantee, the Borough may cause and/or effect such removal, adjustment or relocation, and the expense thereof shall be paid by Grantee, including all costs and expenses incurred by the Borough due to Grantee's delay.

**3.16 COMMON USERS.** Grantee acknowledges that the Public Ways have a finite capacity for containing conduits. Therefore, Grantee agrees that whenever the Borough Engineer determines it is impracticable to permit construction of an underground conduit system by any Person which may at the time have authority from the Borough to construct or maintain conduits or ducts in the public Ways, the Borough Engineer may require Grantee to afford to such other Person the right to use Grantee's surplus ducts or conduits in common with the Grantee, pursuant to the terms and conditions of an agreement for use of surplus conduits and ducts being entered into by the Grantee and the Licensee.

**3.17 NOTICE TO COMMON USERS.** The Grantee shall give a Licensee and the Borough one hundred twenty (120) days advance notice of Grantee's need to occupy a licensed conduit and shall propose that the Licensee take the first feasible action listed:

- A. Pay conduit rent to Grantee designed to recover the cost of retrofitting the conduit with multiplexing, optical fibers, or other space-saving technology sufficient to meet the Licensee's space needs; or
- B. Pay conduit rent to Grantee based on the cost of new conduit constructed to meet the Licensee's space needs; or
- C. Vacate ducts that are no longer needed; or
- D. Construct and maintain sufficient new conduits to meet the Licensee's space needs.

**3.18 OCCUPANCY RIGHT.** When two or more Licensees occupy a section of Conduit Facility, the last Licensee to occupy the Conduit Facility shall be the first to vacate or construct a new conduit. When conduit rent is revised because of retrofitting of space-saving technology and/or construction of new conduit, all Licensees shall bear the revised cost.

**3.19 SAFETY STANDARDS FOR LICENSEES.** All attachments shall meet local, state, and federal clearance and other safety requirements, be properly grounded and anchored, and meet the provisions of contracts executed between the Grantee and the Licensee. The Grantee may, at its option, correct any attachment deficiencies and charge the Licensee for its costs. Each Licensee shall pay the Grantee for any fines, fees, damages, or other reasonable costs the Licensee's attachments cause the Grantee to incur.

**3.20 REMOVAL OF EQUIPMENT.** Upon its failure to comply with this Rights of Way Ordinance the Franchising Authority shall have the right to require the Grantee to remove at its own expense all portions of the Telecommunications System from all Public Ways. The Grantee shall within six (6) months after having been given written notice, remove from the Public Ways all such property of such Telecommunications System other than any which the Franchising Authority may permit to be abandoned in place. In the event of such removal, the Grantee shall promptly restore the Public Way or other area from which such property has been removed to a condition as good as that previously prior to such work.

A. Any property of the Grantee remaining in place six (6) months after the Grantee is given notice pursuant to this Section 3.20 may at the option of the Franchising Authority be considered permanently abandoned. The Franchising Authority may extend such time not to exceed an additional ninety (90) days.

B. Any property of the Grantee which the Franchising Authority permits to be abandoned in place shall be abandoned in such manner as the Franchising Authority shall prescribe. Subject to the provisions of any utility joint use attachment agreement, upon permanent abandonment of the property of the Grantee in place the property shall become that of the Franchising Authority, and the Grantee shall submit to the Franchising Authority an instrument in writing, to be approved by the Franchising Authority, transferring to the Franchising Authority the ownership of such property.

#### SECTION 4 REGULATION BY FRANCHISE AUTHORITY

##### 4.1 **FRANCHISE FEE.**

A. In consideration of permission to use the Public Ways, Grantee shall pay as a franchise fee to the Borough, an amount equal to Two Dollars and 50/100 (\$2.50) per linear foot of Grantee's Telecommunications System placed above the Public Ways and Three Dollars and 75/100 (\$3.75) per linear foot of Grantee's Telecommunications System placed underground in the Public Ways, provided that such placement of the Telecommunications System is in accordance with Section 3.9 of this Franchise. The total number of linear f a of Grantee's Telecommunications System, both aerial and underground, located in the Public Ways shall be determined by the as-built maps submitted by the Grantee, and approved by the Borough Engineer, as provided in Section 3.B.

B. The amount of the linear foot franchise fee specified herein shall increase annually. The franchise fee due to Borough during each ensuing twelve month period shall be equal to the rate of the franchise fee in effect during the preceding twelve month period, times a fraction in which the numerator is the Index (as set forth below) for the first month of the ensuing period and the denominator is the Index for the first month of the immediately preceding twelve month period; provided, however, that in no event shall the rate of the franchise fee during any ensuing period be less than the rate of the franchise fee for the

immediately preceding twelve month period. As soon as the rate of the franchise fee for the ensuing period is calculated by the Borough, the Borough shall give Grantee notice of the amount of the franchise fee based upon the updated rate, and if the amount of the franchise fee previously paid by Grantee during my calendar quarter shall be less than actually due, Grantee shall pay the difference to the Borough with the next installment of franchise fees. The Consumer Price Index for Urban Wage Earners and Clerical Workers, U.S. City Average, all Items (1982-1984 = 100) (the "Index") shall be used. If the Index is changed so that the base year differs from that set forth above, the Index shall be converted in accordance with the conversion factor published by the U.S. Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the term of this Agreement, or any extension or renewal thereof, such other governmental index or computation with which it is replaced shall be used in order to obtain substantially the same result as would have been obtained if the Index had not been discontinued or revised.

C. The franchise fee shall be assessed on an Annual basis and shall be payable to the Franchising Authority no later than thirty (30) days after Grantee's receipt of a statement from the Borough setting forth the franchise fee for which payment is due. Upon request by the Franchising Authority, Grantee shall provide such additional information as may be reasonably required.

D. In the event that any franchise fee or other payment is not made or the requisite documentation is not provided on or before the applicable dates heretofore specified, interest shall be compounded daily and set at the one-year United States Treasury Bill rate existent on the date payment was due, plus three (3) percentage points. Any amount recomputed to reflect correct payment due shall bear interest as described from the date such payment was originally due.

## SECTION 5 COMPLIANCE AND MONITORING

### 5.1 TESTING FOR COMPLIANCE.

A. From time to time, upon request of the Franchising Authority, a Licensee shall furnish to the Franchising Authority at no cost or expense to the Franchising Authority (i) a complete inventory of the features and services offered and/or being carried over its Telecommunications System; and, (ii) a copy of all technical tests performed on the Telecommunications System by it or on its behalf.

B. The Franchising Authority may perform technical tests of the Telecommunications System during reasonable times and in a manner which does not unreasonably interfere with the normal business operations of the Grantee or the Telecommunications System in order to determine whether or not the Grantee is in compliance with the terms hereof and all applicable laws, ordinances, rules and regulations. Except in emergency circumstances, such tests may be undertaken only after giving Grantee reasonable notice thereof in writing, not to be less than five

(5) days, and providing a representative of Grantee an opportunity to be present during such tests. In the event that such testing demonstrates that the Grantee has failed to comply with this Ordinance, the reasonable costs of such tests shall be borne by the Grantee and paid to the Franchising Authority within thirty (30) days. In the event that such testing demonstrates that Grantee has complied therewith, the cost of such testing shall be borne by the Franchising Authority.

## SECTION 6 INSURANCE, INDEMNIFICATION AND BONDS OR OTHER SURETY

### 6.1 INSURANCE, INDEMNIFICATION AND BONDS OR OTHER SURETY.

A. Grantee shall save the Borough, its agents, employees and elected and appointed officials, harmless from and against all claims, damages, losses and expenses, including reasonable attorney's fees, sustained by the Borough on account of any suit, judgment, execution, claim or demand whatsoever arising out of the construction, leasing, operation or maintenance of the Telecommunications System authorized herein, whether or not any act or omission complained of is authorized, allowed and/or prohibited by the Franchise and the rights granted thereunder.

B. (1) Grantee shall obtain and maintain in full force and effect throughout the term of this Franchise insurance with an insurance company licensed to do business and doing business in the Commonwealth of Pennsylvania and acceptable to the Franchising Authority. All companies will be required to be rated A-VII or better by A.M. Best or A better by Standard and Poors. Grantee shall provide Franchising Authority with proof of such insurance so required at the Effective Date. The Franchising Authority reserves the right to review these insurance requirements during the Franchise, and upon reasonable advance notice to Grantee, to reasonably adjust insurance coverage and their limits when deemed necessary and prudent by the Franchising Authority, based upon changes in statutory law, court decisions, and/or the claims history of the industry and/or the Grantee.

(2) Subject to Grantee's right to maintain reasonable deductibles in such amounts as are approved by the Franchising Authority, Grantee shall obtain and maintain in full force and effect for the duration of this Franchise, at Grantee's sole expense, Insurance coverage in the following types and minimum amounts:

<u>Type</u>	<u>Amount</u>
a. Workers' Compensation and Statutory Employers Liability	\$100,000/\$500,000/\$100,000

- b. Commercial General (public) Liability -  
to include coverage for the following  
where the exposure exists:

- |  |                              |
|--|------------------------------|
| • Premises operations                                    | Combined single limit for    |
| • Independent contractors                                | bodily injury and property   |
| • Products/completed operations                          | damages \$2,000,000 per      |
| • Personal Injury  | occurrence or its equivalent |
| • Contractual liability                                  |                              |
| • Explosion, collapse and underground<br>property damage |                              |

- c. Comprehensive Automobile insurance coverage for loading and unloading hazards, for:

- |                            |  |
|----------------------------|--|
| • Owned/leased automobiles | Combined single limit of bodily        |
| • Non-owned automobiles    | injury and property damage \$1,000,000 |
| • Hired automobiles        | per occurrence or its equivalent       |

(3) The Franchising Authority shall receive without expense copies of certificates of insurance evidencing coverage stated above. The Franchising Authority may make reasonable requests for deletion, revision or modification of particular policy terms, conditions, limitations or exclusions, except where policy provisions are established by law or regulation binding upon either Franchising Authority or Grantee or upon the underwriter for any of such policies. Upon request for deletion, revision or modification by the Franchising Authority, Grantee shall exercise its best reasonable efforts to accomplish the changes and shall pay the cost thereof.

(4) Grantee agrees that with respect to the above-required insurance, all insurance certificates will contain the following required provisions.

- a. Name the Franchising Authority and its officers, employees, board members and elected and appointed officials as additional insured parties (as the interests of each insured may appear) as to all applicable coverage (except worker's compensation);
- b. Provide for thirty (30) days written notice to the Franchising Authority for cancellation, non-renewal, or material change;
- c. Provide that all provisions of this Franchise concerning liability, duty, and standard of care, including the Indemnity provisions, shall be underwritten by contractual coverage sufficient to include such obligations within applicable policies, subject to policy terms and conditions.

(5) Companies issuing the insurance policies shall have no recourse against the Franchising Authority for payment of any premiums or assessments which all are set at the sole risk of the Grantee. Insurance policies obtained by Grantee shall provide that the issuing

company waives all right of recovery by way of subrogation against the Franchising Authority in connection with any damage covered by these policies.

C. Grantee shall obtain and maintain, at its sole cost and expense, and file with the Franchising Authority, a corporate surety bond with a surety company authorized to do business in the Commonwealth of Pennsylvania and found acceptable by the Franchising Authority, in the amount of fifteen percent (15%) of Grantee's estimated project costs to secure Grantee's performance of its obligations and faithful adherence to all requirements of this Franchise. The Borough shall have the right to verify all such estimated project costs and to require Grantee to increase the amount of said bond accordingly.

(2) The rights reserved to the Franchising Authority with respect to the bond are in addition to all other rights of the Franchising Authority, whether reserved by this Franchise or authorized by law; and no action, proceeding or exercise of a right with respect to such bond shall affect the Franchising Authority's rights to demand full and faithful performance under this Franchise or limit Grantee's liability for damages.

(3) The bond shall contain the following endorsement: "It is hereby understood and agreed that this bond may not be cancelled by the surety nor any intention not to renew be exercised by the surety until sixty (60) days after receipt by the Borough of Blawnox, by registered mail, of written notice of such intent."

D. All expenses of the above-noted insurance and bond shall be paid by the Grantee.

E. The insurance policies mentioned herein shall contain an endorsement stating the following:

Should any policies of insurance be cancelled or coverages be reduced, before the expiration date of said policies of insurance, the issuer shall deliver thirty (30) days advance written notice to the Borough.

F. Neither the provisions of this Agreement nor any insurance accepted by the Borough pursuant hereto, nor any damages recovered by the Borough thereunder, shall be construed to excuse faithful performance by the Grantee and/or limit the liability of the Grantee under the Franchise issued hereunder and/or for damages, either to the full amount of the bond or otherwise.

## SECTION 7 ENFORCEMENT AND TERMINATION OF FRANCHISE

7.1 **GENERAL.** In addition to all other rights, remedies and powers reserved and/or retained by the Franchising Authority under this Rights of Way Ordinance or otherwise, the Franchising Authority reserves the right to forfeit and revoke the Franchise and all rights and privileges of Grantee in the event of willful or repeated violation of this Ordinance.

**7.2 PENALTIES.** Any Person which commits or suffers the violation of this Ordinance, shall, upon being found liable in a civil enforcement proceeding commenced by the Borough, pay a fine of Six Hundred Dollars (\$600.00) plus all court costs, including reasonable attorneys fees incurred by the Borough. A separate offense shall arise for each day or portion thereof in which a violation is found to exist or for each section of this Ordinance which is found to have been violated. In addition, to civil actions before a District Justice, the Borough may enforce this Ordinance in an action in equity brought in the Allegheny County Court of Common Pleas.

## SECTION 8 MISCELLANEOUS PROVISIONS

**8.1 COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES.** The Grantee shall, at all times during the term of this Agreement, be subject to the exercise of the police power by the Franchising Authority and to such other lawful ordinances, rules and regulations as Franchising Authority shall hereafter adopt. There is hereby reserved to Franchising Authority every right and power which is required to be herein reserved or provided by my ordinance, rule or regulation of the Franchising Authority, and the Grantee shall comply with any action or requirements of Franchising Authority in its exercise of such right or power heretofore or hereafter enacted or established. The Grantee shall comply with all lawful ordinances, codes, laws, rules and regulations of the Franchising Authority, County of Allegheny, Commonwealth of Pennsylvania, and the United States of America which are now in effect or hereafter enacted.

**8.2 CONFLICT.** Whenever the requirements of this Ordinance are in conflict with other requirements of the Ordinances of the Borough of Blawnox, the most restrictive, or those imposing the highest standards shall govern and award of a Franchise by the Borough does not constitute a waiver or impairment of the rights of the Borough at law or equity now or henceforth existing to proceed versus Grantee for enforcement of the Franchise or violation of this Franchise or ordinances of the Borough.

**8.3 EFFECTIVE DATE.** This Ordinance shall become effective five (5) days after the date of its within enactment.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

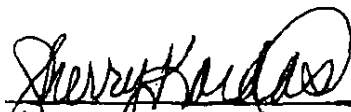
**SECTION 2.** The provisions of this Ordinance are severable. If any section, clause, sentence, pan or provision thereof shall be held illegal, invalid or unconstitutional by any court of competent jurisdiction, such decision of the Court shall not affect or impair any of the remaining Sections, clauses, sentences, parts of provisions of this Ordinance. It is hereby declared to be the intent of the Board of Supervisors that this Ordinance would have been adopted if such illegal, invalid or unconstitutional Section, clause, sentence or part of a provision has not been included herein.

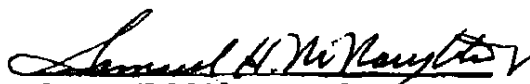
**SECTION 3.**

DULY ADOPTED THE 12<sup>th</sup> DAY OF February, 2001.

ATTEST:

BOROUGH OF BLAWNOX

  
Sherry Kordas  
Borough Manager/Secretary

  
Samuel H. McNaughton, Jr.  
President

ENTERED INTO LEGAL BOOK ON 12<sup>th</sup> day of February, 2001

Examined and approved this 12<sup>th</sup> day of February, 2001.

  
Thomas M. Smith, Mayor





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## Exhibit “C”



716 697 5100  
716-442-8845  
140 Allens Creek Road  
Rochester NY 14618

April 26.2002

Mr. William E. Lestitian  
Third Floor, Grant Building  
Pittsburgh, Pennsylvania 15219-2203

Re: Borough of Blawnox, Pennsylvania  
Telecommunication Franchise

Dear Bill,

Thank you for returning my calls to Mr. Poiner. As I indicated to you, I wanted to respond to the communications from Mr. Polner to John K. Purcell, Fibertech Networks LLC's President.

Fiber Technologies Networks, L.L.C. is a wholly owned company of Fibertech Networks, LLC. Fiber Technologies Networks provides a telecommunications service, is regulated by the Commonwealth of Pennsylvania Public Utility Commission and has a Certificate of Public Convenience from that Commission.

Fiber Technologies Networks is in the process of constructing a state of the art, fiber optic sonet ring for the Greater Pittsburgh area, which can be expected to stimulate economic growth, thereby generating jobs and increasing the local tax base.

The construction plan for the Borough of Blawnox is to install fiber cable on existing utility poles in the Stare right-of-way, along Freeport Road, a state highway.

Bill, as we discussed, enclosed is a draft of a Telecommunication Franchise for your review.

Thank you for your attention and cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mario'.

Mario R. Rodriguez  
Director of Government Affairs  
& Facilities Access

kl:MRR  
Enclosure  
cc: John K. Purcell



## Exhibit “D”

# R O T H M A N      G O R D O N

Louis B. Kushner  
Thomas R. Solomich  
Stephen H. Jordan  
Frederick A. Polner  
James R. Farley  
Ronald G. Backer  
Shelley W. Elovitz  
K. Sidney Neuman  
Martha A. Zatezalo

Mark S. Weis  
William E. Lestituan  
Robert A. Galanter  
James W. Carroll, Jr.  
Paul R. Yagelski  
Alan C. Blanco  
Bernadette L. Pozzuolo  
R. Douglas DeNardo

## ATTORNEYS AT LAW

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Elliott J. Schuchardt  
Charles A. Lamberton  
John W. Zatkos, Jr.

Of Counsel  
Jack G. Armstrong

Emil W. Herman  
1934 - 1999  
Norman A. Groudine  
1916 - 2000

May 30, 2002

Mr. Mario R. Rodriguez  
Director of Government Affairs  
& Facilities Access  
Fibertech Networks  
140 Allens Creek Road  
Rochester, NY 14618

### **RE: Blawnox, Pennsylvania**

Dear Mr. Rodriguez.

On behalf of the Borough of Blawnox, I am enclosing with this letter a form of Certification - Telecommunications Provider, which your company may use to establish its qualifications under the Borough's Rights of Way Ordinance, a copy of which previously has been furnished.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,



Frederick A. Polner

FAP/gld  
Enclosure

cc: Mr. Sam McNaughton, Council President (w encl.)  
Tom Smith, Mayor (w encl.)  
Randy Stoddard, Member of Council (w encl.)  
Denny Chuvala, Member of Council (w encl.)  
Sherry Kordas, Borough Manager (w encl.)  
John F. Cambest, Esquire (w encl.)

**BOROUGH OF BLAWNOX  
COMMONWEALTH OF PENNSYLVANIA**

**CERTIFICATION - TELECOMMUNICATIONS PROVIDERS**

This certification is to be completed by each telecommunications provider seeking to begin construction, operation or use of a telecommunications network within the public rights of way owned or controlled by the Borough of Blawnox, Pennsylvania. Attach additional sheets if necessary.

- 1. IDENTITY OF THE PROVIDER:** The name, address, telephone number, and fax number of the Provider.

Please identify any predecessors of the Provider and provide other names under which the Provider has operated within the preceding five years, including name, address, and telephone number.

- 2. ATTORNEY:** The name, address, telephone number, and fax number of the Provider's attorney.

- 3. CONTACT(S):** The name, title, address, telephone number, and fax number of the person(s) to whom questions about this Provider Certification should be addressed.

- 4. FICTITIOUS NAME:**

☐ The Provider will not be using a fictitious name.

☐ The Provider will be using a fictitious name. Attach to *this Certification* a copy of the Provider's filing with the Commonwealth's Department of State pursuant to 54 Pa. C.S. §311, Form PA-953.

**5. BUSINESS ENTITY AND DEPARTMENT OF STATE FILINGS:**

- ☐ The Provider is a sole proprietor.
- ☐ The Provider is a:
  - ☐ General partnership
  - ☐ Domestic limited partnership (15 Pa. C.S. 58511)
  - ☐ \*Foreign limited partnership (15 Pa. C.S. 58582)
  - ☐ Domestic registered limited liability partnership (15 Pa. C.S. §8201)
  - ☐ \*Foreign registered limited liability general partnership (15 Pa. C.S. §8211)
  - ☐ Domestic corporation (15 Pa. C.S. §1306)
  - ☐ \*Foreign corporation (15 Pa. C.S. §4124)
  - ☐ Domestic limited liability company (15 Pa. C.S. §8913)
  - ☐ \*Foreign limited liability company (15 Pa. C.S. §8981)

Provide name and address of Corporate Registered Office Provider or Registered Office within **PA**

Attach to this Certification the name and address of partners. If any partner is not an individual, identify the business nature of the partner entity and identify its partners or officers.

Attach to this Certification proof of compliance with appropriate Department of State filing requirements as indicated above.

- ☐ List name and address of officers and directors:



**6. AFFILIATES:**

- ☐ The Provider has no affiliates
- ☐ The Provider has affiliates but Provider does not conduct business with any such affiliate(s), nor does Provider have any business arrangement with such affiliate(s), except as follows: (Identify each such affiliate and provide descriptive summary of the business conducted or the business arrangement. Attach an addition sheet if necessary.)
- “Affiliate” means a person or entity (i) with a direct or indirect ownership interest in the subject entity of five (5%) percent or more or controls such interest, including forms of ownership such as general, limited, or other partnership interests, direct ownership interests, limited liability companies and other forms of business organizations and entities but, not including corporations, (ii) with a stock interest in the subject entity where the subject entity is a corporation and such stockholder or its nominee is an officer or director of the Provider or who directly or indirectly owns or controls five (5%) percent or more of the outstanding stock, whether voting or non-voting; or (iii) which controls Provider, is controlled by, or is under common control with such Provider or entity.

**7. PROVIDER’S PRESENT OPERATIONS:**

- ☐ The Provider is not presently doing business in Pennsylvania as a public utility
- ☐ The Provider is presently doing business in Pennsylvania as a:
- ☐ Interexchange Toll Reseller, InterLATA and/or IntraLATA, (e.g., MTS, 1+, 800, WATS, Travel and Debit Cards)
  - ☐ Interexchange Toll Facilities-based carrier, InterLATA and/or IntraLATA, (e.g., MTS, 1+, 800, WATS, Travel and Debit Cards)
  - ☐ Competitive Access Provider (dedicated point-to-point or multipoint service; voice or data)
  - ☐ Competitive Local Exchange Carrier:
    - ☐ Facilities-Based
    - ☐ Non-facilities-Based
  - ☐ Incumbent Local Exchange Carrier.
  - ☐ Other (Identify)